

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

April 27, 2006

In the Matter of
Henry Comstock, Trustee
Wingaway Trust

Docket No. 2003-172
File No. SE3-4048
Barnstable

RECOMMENDED FINAL DECISION

This is an appeal by the Barnstable Conservation Commission of a Superseding Order of Conditions (SOC) issued from the Department's Southeast Regional Office approving the construction of a pier, ramp, floats and stairway for beach access. Prior to the issuance of the SOC, the Barnstable Conservation Commission denied the project under the Barnstable Wetlands Protection Ordinance and the Wetlands Protection Act, and the applicant appealed the local denial to Superior Court.

A motion to stay this proceeding in accordance with Wetlands Policy 89-1 (Appeal Stays: Stay of Requests for Adjudicatory Hearings in Wetlands Permit Cases when an Order of Conditions has been Denied under a Local Wetlands Bylaw) was granted on July 22, 2004.

On April 25, 2006, the Department's Office of Appeals and Dispute Resolution received a motion to lift the stay filed by the petitioner, requesting the SOC be vacated and the appeal be dismissed as moot. In support of its motion the petitioner states that on November 29, 2004 the Barnstable Superior Court affirmed the Conservation Commission's denial of the project under the Barnstable Wetlands Protection Ordinance by entering judgment in the applicant's appeal of



that local permitting decision. The petitioner's motion states further that applicant appealed the Superior Court's judgment to the Appeals Court and the Appeals Court affirmed the Superior Court decision on March 7, 2006.

The Commission's denial under the local wetlands ordinance is now final. The project cannot now be built as conditioned in the SOC, as the applicant cannot comply with General Condition number 3 or Special Condition number 2 in the SOC. Those conditions respectively require compliance with all local statutes, bylaws, ordinances or regulations, and specifically identify compliance with the Barnstable Wetlands Protection Bylaw. Accordingly, I recommend granting the petitioner's motion, vacating the SOC and dismissing this appeal as moot pursuant to 310 CMR 1.01(5)(a)2 and 310 CMR 1.01(6)(a)15.f.iii.

NOTICE

This decision is a recommended final decision of the Presiding Officer. It has been transmitted to the Commissioner for his final decision in this matter. This decision is therefore not a final decision subject to reconsideration under 310 CMR 1.01(14)(e), and may not be appealed to Superior Court pursuant to M.G.L. c.30A. The Commissioner's final decision is subject to rights of reconsideration and court appeal and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this recommended final decision or any part of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner in his sole discretion, directs otherwise.

This final document copy is being provided to you electronically by the
Department of Environmental Protection. A signed copy of this document
is on file at the DEP office listed on the letterhead.

Ann Lowery
Presiding Officer

Adopted by Commissioner Robert W. Golledge, Jr., May 2, 2006.